Organising Law

An aid to working with law more effectively is to organise law at two levels – macro and micro.

Macro Organisation

Macro organisation is the task and the skill of organising a whole area of law. This can take the form of a subject, typically with a traditional name such as property law, torts or tax law. It can also entail organising law that is set out in a statute. The advantage of performing this type of organisation is that it 'tidies up' the law. This facilitates understanding and using the law.

Micro Organisation

Every area of law ultimately consists of a collection of specific rules. Most of these specific rules have a standard structure based on three components – elements, consequences and a conditional statement.

Element

An element delineates a type or category of fact. This is the means by which a legal rule determines when it applies to a set of facts. It applies when the set of facts contains facts that fit within or satisfy the type or category of facts that each element delineates. This means that a list of the elements of a legal rule also constitutes a checklist for determining when the facts of a case fall within the rule.

Consequences

When a legal rule applies to a set of facts it brings consequences. These are the consequences that the legal rule in question describes and imposes. There is a major classification of consequences:

1. Civil Litigation. In civil litigation the most prevalent consequence is an order on a wrong doing defendant to pay damages to the plaintiff whom they have wronged. There are other orders such as an injunction or an order to return property.

2. Criminal Law. Criminal law imposes punishment on an accused when the court finds that they are guilty of the crime for which they have been charged. The most severe punishment is a jail sentence. A court may fine a convicted person or order them to perform some community service.

3. Transactions. In a transaction parties generally do not have to prove facts as occurs in litigation. Instead a party has to do something to satisfy an element of the rule that authorises the transaction.

Conditional Statement

The legal force of a legal rule resides in its being framed as a conditional statement. In plain language a rule says 'when these facts occur in a case these legal consequences follow'.

Organising Litigation

Structure

Most cases that come to court involve a dispute of facts. There is a simple way of organising the main components of a case, which is to set them out in a framework that the author describes as the model for litigation. This framework is based on the following propositions:

1. The elements and consequences of the legal rule that creates the case of action constitute the template for organising a case.

2. For a plaintiff to win the plaintiff must allege and prove facts that fit within and thus satisfy each element of the cause of action.

3. Where facts are in dispute, each party uses evidence in an attempt to prove their version of the facts.

Diagram

The following diagram illustrates this model:

1	2	3	4	5
Law	←	**Facts**	←	**Evidence**
Element 1		Fact 1		Evidence 1
Element 2		Fact 2		Evidence 2
Element n		Fact n		Evidence n
↓				
Consequences				
Consequence 1		ConFact 1		ConEvidence 1
Consequence 2		ConFact 2		ConEvidence 2
Consequence n		ConFact n		ConEvidence n
Diagram: Basic Model for Litigation				

Structure

This diagram rests on a simple but vital relationship between five items:

1. Elements. The elements of the cause of action define the material facts, which in turn identify when the legal rule applies. Elements in the model are designated as Elements 1-n.

2. Material Facts. The core facts of the case are called the material facts (and

also the relevant facts or the essential facts). The material facts of the case are so called because a plaintiff must establish each one of them to win the case. Material facts in the model are designated as Facts 1-n.

3. Evidence. When a material fact is in dispute a plaintiff needs evidence in order to prove it. Evidence for material facts is designated in the model as Evidence 1-n.

4. Consequences. When a plaintiff makes out their case by establishing each material fact, the legal consequences provided by the cause of action then follow. Generally these involve a court granting some sort of remedy to the plaintiff. Consequences in the model are designated as Consequences 1-n. In making a claim for consequences a party typically has to use evidence to prove facts that determine the nature or extent of the consequences. These facts and the supporting evidence are labelled ConFacts and ConEvidence, where the prefix 'Con' distinguishes the facts and evidence for consequences from the facts and evidence used to establish the case itself.

5. Conditional Statement. The rule that comprises the cause of action is framed as a conditional statement that takes the following form: when a set of facts contains facts that satisfy each element of the cause of action the rule applies to those facts. When the rule applies it visits the parties with the consequences that the rule specifies.

Function

This model functions in the following way:

1. Column 1. Column 1 sets out the cause of action, which is the law or the legal rule that underlies the litigation. The rule consists of elements and consequences. These are Elements 1–n and Consequences 1–n.

2. Column 3. Column 3 in the top part sets out the facts that satisfy the elements of the legal rule. These are Facts 1–n. The right facts (commonly called the material facts, relevant facts or the essential facts) will satisfy each element of the legal rule. The diagram signifies this by the arrow in Column 2 linking Column 3 (Facts) to Column 1 (Law).

3. Column 5. Column 5 contains the evidence that can establish the facts. In litigation a lawyer uses evidence to prove disputed facts. The evidence is labelled Evidence 1-n such that Evidence 1 is the evidence that is capable of proving Fact 1, Evidence 2 is the evidence that is capable of proving Fact 2 and so on. Thus Evidence 1-n is the evidence that is capable of proving Facts 1–n. The diagram signifies this by the arrow in Column 4 linking Column 5 (Evidence) to Column 3 (Facts).

4. Achieving the Consequences. To win a case a plaintiff needs to satisfy each element in the legal rule that constitutes the cause of action. These are labelled Elements 1–n. A plaintiff satisfies an element by producing or proving (if there

is a dispute) the relevant material fact for that element. These facts are labelled Facts 1–n. The evidence for proving these facts is labelled Evidence 1–n.

5. Nature of the Consequences. In civil cases consequences consist of the remedies that the court grants to a successful plaintiff. In criminal cases the consequences consist of the punishment that the court imposes on a convicted defendant.

6. Components of the Consequences. Consequences may have components. These are labelled Consequences 1–n. There are two obvious ways in which consequences can have components. First, a remedy may have components. For example, the remedy of damages is made up of a number of heads or types of damages. Second, there may be two or more remedies for a wrongful act.

7. ConFacts. To obtain a designated legal consequence it may be necessary to establish some relevant facts. ConFacts 1–n are set out in the bottom half of Column 3. ConFacts 1–n are the facts that support Consequences 1–n. For example in personal injury case a plaintiff who claims loss of wages has to assert the loss of wages through being off work and has to prove being off work and the amount of those wages.

8. ConEvidence. To prove ConFacts a party needs evidence. The diagram labels the evidence to prove ConFacts 1–n as ConEvidence 1–n. ConEvidence 1–n is located in the bottom half of Column 5.